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# MT LEGISLATIVE HISTORY

Chapter 74 1989

Bill (H) 154 S _____ Original bill & hist. ___C

| H. Committee on Judiciary | | S. Committee on Labor & Employment Relations | |
|---|---|---|---|
| Hearing Date(s) Jan 24 | ✓C | Hearing Date(s) Feb 28 | ✓C |
| Jan 30 | ✓C | _____ | ___C |
| _____ | ___C | _____ | ___C |
| _____ | ___C | _____ | ___C |
| Date Out Jan 30 | ✓C | Feb 28 | ✓C |

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Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

workshops. The division proposes to take the extended employment money to serve the same people when they enter private employment.

Senator Keating asked if the people in rehabilitation can eventually get to a point of self sustaining. Ms. Williams stated in some cases, but not all. Senator Keating stated the developmentally disabled reach a certain point, then regress. In vocational rehabilitation, a individual can restore themselves to a point of self care and self providing. Ms. Williams agreed. Vocational rehabilitation is taking care of an amputee until the individual can return to work. Extended employment will be geared towards more severe individuals. Vocational rehabilitation's goal is to be self sufficient and self supporting. Extended employment includes people who can or cannot restore themselves.

Senator Devlin asked Ms. Williams about the $283,076, identified in the legislation. Was the money appropriated in the subcommittee. Yes, the money is current level funding.

Senator Hofman stated these people receive some money, but it is not much. The Legislature will probably spend less money on these people in the long run, but with the same amount of money, the legislation could help more people.

Senator Pipinich stated some of the people have been trained through the sheltered workshops and are holding down jobs, such as hotel domestic service jobs. With this bill, the Legislature can help these people through the ladder, so the individuals can take over their own lives.

Senator Keating asked if there is a chance for federal funding. Ms. Williams offered there is always hope. Currently, the federal fund money can be used for training expenses, but not on going support.

Closing by Sponsor:

Representative Rice stated the legislation will help the individuals by extending the hand of assistance during a transition period to help the individuals into the new phase of their lives. Representative Rice stated the legislation is not for the developmentally disabled, but for the individuals who are very disabled, like the blind and deaf, the head injured. Rice urged passage of SB 243.

## HEARING ON HOUSE BILL 154

Presentation and Opening Statement by Sponsor:

Representative Clyde Smith, House District 5, sponsor of HB 154 stated the purpose of the legislation is to clarify statutes, allowing a stay of a workers' compensation court decision while that decision is being appealed. HB 154 is drafted in response to a Supreme Court decision, "Reil vs The State Compensation Insurance Fund". In this case, even though the initial decision was appealed, the State Compensation Insurance Fund had to start paying benefits according to the Workers' Compensation Court decision. In the same case, the Supreme Court overturned the decision, which then required the State Fund to attempt to seek reimbursement for the benefits paid.

Prior to this decision, the Judgment of the Workers' Compensation Court was in effect put on hold pending an appeal regardless of whether the claimant or the insurer/employer was appealing the decision. The stay of judgement requested in HB 154 is in accordance with the procedures that apply in district court cases where a decision is being reconsidered or will be appealed to the Supreme Court. The original bill included a retroactive clause which was removed by the House Labor Committee. We recommend the committee includes a retroactive clause as well as a severability clause. The division staff will discuss the amendment in a little more detail, but the bill does need to be made retroactive because the vast majority of claims which are being appealed to the Supreme Court are old law claims. It is the old law claims, those prior to the 1987 Legislative changes, which primarily deal with long term and lump sum benefits, which may be appealed. A stay is needed until a final decision is rendered by the Supreme Court. The original bill, before it was amended, was agreed to by a group of individuals representing various interests in Workers' Compensation.

List of Testifying Proponents and What Group they Represent:

Jim Murphy, Bureau Chief, representing the Workers' Compensation Division.

Michael Sherwood, representing the Montana Trial Lawyers Association.

Oliver Goe, representing the Mt. Municipal Insurance Authority.

George Wood, representing the Montana Self-Insurers Association.

Katrina Martin, representing the Norm Grossfield Law Firm, Helena, Montana.

Testimony:

Jim Murphy, Bureau Chief, Compensation Insurance Fund, stated HB 154 allows the employer's insurer to request a stay if a Workers' Compensation Court decision is being reconsidered or appealed to the Supreme Court. In the Reil Decision referred to by Representative Smith, the order denying the stay and indicating there was no provision to get a stay under the Workers' Comp Act, was dated July 21, 1987. The final decision was issued on December 3, 1987. The denial for rehearing was issued on January 5, 1988. The final decision overturned the Workers' Compensation Court decision, but since there was no stay, the State Fund paid benefits after the stay was denied. The State Fund paid a total of $13,748 in Compensation Benefits and $10,294 in medical. The division has requested the monies be returned and have received nothing from the claimant, but $3,598 has been received from the medical providers. The Division intends to continue to pursue the collection, but it is somewhat difficult because the claimant does not have the funds. The Division understands one of the major medical providers is no longer in business. It appears it will be necessary to pursue the benefit collections through legal means or at least through the department of revenue's normal collection procedures, adding additional administrative costs. A stay, if granted by the court, would avoid such problems.

The proposed amendment, providing for retroactive statute application, allows for a Workers' Compensation Court decision stay of any court decision, not just for workers injured at the effective date of this bill. The House removed the clause because of past Supreme Court decisions which denied the retroactive application of statutory changes to the Workers' Compensation Act. The statute constitutionality could also be challenged. The amendment includes a severability clause, if such a challenge is successful.

However, the division believes, after reviewing case law and consulting with outside legal counsel, the statute could be applied retroactively to all injuries and withstand a constitutional challenge. The bill and amendment merely extends to Workers' Comp Court decisions the existing procedure for stays of execution, which are already available for civil appeals to the Supreme Court from the district courts. Mr. Murphy stated the committee is provided with a letter from the division's outside counsel. (Exhibit 1) The letter provides a legal analysis why the division believes a constitutional challenge could be defended. It is becoming increasingly evident the 1987 Legislative changes are resulting in less and less litigation on new

claims. The stay, as Representative Smith testified, is needed most when the division litigates old law claims. HB 154 does not leave the claimant without recourse: HB 154 refers to Rule 7(b), Montana Rules of Civil Procedure, which allows the Supreme Court to suspend, modify, restore any order the Workers' Compensation Court may issue regarding a stay of execution.

Michael Sherwood, Montana Trial Lawyers Association, stated when HB 154 was amended in the House, after being considered by labor, trial lawyers, Norm Grosfield, and others, compromises were reached. The Trial Lawyers Association now stand behind HB 154.

Jim Murry, Executive Secretary of the Montana AFL-CIO, stated support of HB 154.

Oliver Goe, Montana Municipal Insurance Authority, stated the Authority is a coalition of approximately one hundred Montana cities and towns providing self insurance both for Workers' Compensation and liability. Mr. Goe stated he feels HB 154 accomplishes what the Legislature intended the Workers' Compensation to be in the first place, having the same rights of appeal to obtain a stay of appeal on appropriate bonds. The court stated the insurer is going to have to take the risk in the appeal if it should prevail.

George Wood, Executive Secretary, Montana Self Insurers Association stated support of HB 154, as amended. HB 154 is part of the bill package agreed upon by all segments of Workers' Compensation.

Katrina Martin, speaking in behalf of Norm Grosfield, stated support of HB 154.

Closing by Sponsor:

Representative Smith urged support of HB 154.

## HEARING ON HOUSE BILL 155

Opening Statement by Sponsor:

Representative Clyde Smith, House District No. 5, stated HB 155 is to clarify a liability insurer employee on an existing claimant when an employee suffers a new injury on the same part of the body. HB 155 is in response to the Supreme Court decision in . The case concerned the individual sustaining another injury to the same part of the body. The Supreme Court over turned the Workers' Compensation Court ruling, stating the following: "We hold

that under the law of Montana, the fact that the injury has reached maximum healing does not eliminate the employers future liability for temporary total disability benefits..."

Testimony:

Jim Murphy, Bureau Chief for the Workers' Compensation, stated the purpose of HB 154 is to clarify the Liability of the employers insurer when the previously injured claimant receives a new non-job related injury to the same part of the body. The issue is whether the insurer on the original injury was liable or whether the accident or incident was a new injury and the liability of the new employer's insurer. The Supreme Court has applied the following stand to determine whether the claimant was reinjured or aggravated an original injury. The standard applied was whether the claimant reached maximum healing. If the claimant may have reached maximum healing, the insurer, at risk at the time of the original injury, was no longer responsible for any subsequent injuries or conditions.

This standard makes good sense and should be applied regardless of whether the subsequent injury is job related or not. In the Reil decision, the Supreme Court differentiated between a subsequent injury on the job vs a non-job related injury. This decision could place the original employer's insurer at risk for any other further accident which was non-job related injury. This decision could place the original employer's insurer at risk for any other further accident which was non-job related. If an injured worker is reinjured off the job, some other insurance should be responsible, health and accident or liability coverage. The Workers' Compensation system should not be at risk for this unmeasurable and unknown future liability. The question is whether the system can afford, after the claimant reaches maximum healing, to be liable for non-job related injuries at home, or car accidents, etc., which may happen in the future.

George Wood, Executive Secretary, Montana Self Insurers, stated Mr. Murphy explained the problems created by the Supreme Court decision, and the fact, liability would go on forever without some change in statutes. The Association stands in support of HB 154.

Oliver Goe, Montana Municipal Insurance Authority, stated HB 155 is important, rendering payment for Workers' Compensation benefits for truly work related injuries of future injuries suffered to the same part of the body. The genesis of the problems is from the Supreme Court decision concerning when the employee has reached maximum healing and has gone back to work, but receives another injury. The

Authority believes HB 155 is a strong, necessary bill, one that would not limit medical wage loss benefits occasioned by the work related injury.

Jim Murry, Executive Secretary of the Montana AFL-CIO, stated support of HB 155.

Michael Sherwood, Montana Trial Lawyers Association, stated the Association approves of the amended legislation.

List of Testifying Opponents and What Group They Represent:

Mike Hankins, representing the Jockey's Guild.

Testimony:

Mike Hankins, Jockey's Guild, stated the Jockey's Guild is the main body representing all riders involved in horse racing. The Guild is concerned with the title's wording of HB 155. Hankins stated he has ridden for over 40 years and have been injured 23 times. Hankins stated he has been under every workers' compensation policy available, and he is not unusual. In the world of the jockey and gallop rider, the most frequent part of the body that is injured and has previously reach maximal healing is the collar bone. Mr. Hankin stated that every part of his body has been injured at least twice. Basically, if this bill is passed, any rider that goes down and reinjures a previously injured part of the body will lay the burden of proof, sustaining the injury, will be laid upon him and his council. The reason why the guild is concern is because in New York a similar bill passed in the New York Legislature. The response of the guild at that time was to have guild members guarantee anyone previously injured and not covered by the New York Statute would have coverage by the Guild. This proved to be very costly. The cost was transmitted through the riders, through the horse trainers ,at a cost of $31. In Montana, the rider runs for the average purse of $750. If the guild is forced to underwrite injuries because of a lack of coverage on pre-existing injuries, the guild will pass the coverage on through the jock mounts to the Montana owners and trainers at an estimated cost $60. The Montana racing industry cannot sustain the impact. Before the jockeys will ride without proper coverage, the jockeys will force the trainer and rider to absorb the cost, creating a tremendous financial burden.

Questions from Committee Members:

Senator Lynch directed comments to Mr. Hankins. If you injure the same collar bone three times while riding the horse, you would still be covered under Montana law. But if

you injure the collar bone after the race is over while celebrating your win, you would not be covered. HB 155 has nothing to do with getting multiple injuries on the same part of your body while you are working. Mr. Hankin stated many injuries show up at a later date. The Guild is concerned about the wordage of the bill title.

Senator Keating stated the jockeys are covered under Workers' Compensation while riding. After a win, and a celebration, do jockeys carry medical insurance. Mr. Hankin stated most cases the average rider carries virtually no insurance due to the high premium charges. Once a guild member is outside the racetrack's confines, the insurance coverage in minimum. Senator Keating asked if the jockey can get medical and accident insurance, other than workers' comp for work related injuries. Hankins replied the jockey can get insurance at a minimum level, the cost will exceed $200 per month. Only two insurance companies will honor the claim.

Closing by Sponsor:

Representative Smith urged passage of 154.

Senator Manning queried the committee about taking executive action on bills heard today. Senator Aklestad received the committee's approval.

DISPOSITION OF HOUSE BILL 154

Discussion:

Senator Aklestad asked Senator Manning if the amendment encompasses the retroactive clause, plus the severability. Yes.

Amendments and Votes:

Senator Manning moved the amendment HB 154. The motion passes unanimously.

Recommendation and Vote:

Senator Manning made a AS AMENDED BE CONCURRED IN recommendation for HB 154. The motion passed unanimously. Senator Manning will carry the bill.

DISPOSITION OF HOUSE BILL 155

Amendment and Vote:

Senator Devlin moved to amend the title of HB 155 to reflect

ROLL CALL

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE Feb 28, 1989

| | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| SENATOR TOM KEATING | X | | |
| SENATOR SAM HOFMAN | X | | |
| SENATOR J.D. LYNCH | X | | |
| SENATOR GERRY DEVLIN | X | | |
| SENATOR BOB PIPINICH | X | | |
| SENATOR DENNIS NATHE | | | X |
| SENATOR RICHARD MANNING | X | | |
| SENATOR CHET BLAYLOCK | X | | |
| SENATOR GARY AKLESTAD | X | | |

## SENATE STANDING COMMITTEE REPORT

February 28, 1989

MR. PRESIDENT:

We, your committee on Labor and Employment Relations, having had under consideration HB 154 (third reading copy -- blue), respectfully report that HB 154 be amended and as so amended be concurred in:

Sponsor: Smith (Hanning)

1. Title, line 11.
Strike: "AN"
Insert: "A RETROACTIVE"

2. Page 2, line 22 through page 3, line 3.
Strike: section 5 in its entirety
Insert: "NEW SECTION. Section 5. Retroactive applicability. [This act] is procedural in nature and applies retroactively, within the meaning of 1-2-109, to any case pending before the workers' compensation judge that has not been appealed to the Montana supreme court on or before the [effective date of this act].

NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

AND AS AMENDED BE CONCURRED IN

Signed: _____
Gary C. Aklestad, Chairman

Ex. 1 A PS/9
2-28-89
HB 154

TESTIMONY BY

REPRESENTATIVE CLYDE SMITH

HOUSE BILL 154

(Before Senate Labor)

THE PURPOSE OF THIS LEGISLATION IS TO CLARIFY THE STATUTES BY ALLOWING A STAY OF A WORKERS' COMPENSATION COURT DECISION WHILE THAT DECISION IS BEING APPEALED. THIS IS IN RESPONSE TO A SUPREME COURT DECISION, "REIL vs THE STATE COMPENSATION INSURANCE FUND." IN THIS CASE, EVEN THOUGH THE INITIAL DECISION WAS APPEALED THE STATE COMPENSATION INSURANCE FUND HAD TO START PAYING BENEFITS ACCORDING TO THE WORKERS' COMPENSATION COURT DECISION. IN THIS SAME CASE THE SUPREME COURT OVERTURNED THE DECISION WHICH THEN REQUIRED THE STATE FUND TO ATTEMPT TO SEEK REIMBURSEMENT FOR THE BENEFITS PAID.

PRIOR TO THIS DECISION, THE JUDGMENT OF THE WORKERS' COMPENSATION COURT WAS IN EFFECT PUT ON HOLD PENDING AN APPEAL REGARDLESS OF WHETHER THE CLAIMANT OR THE INSURER/EMPLOYER WAS APPEALING THE DECISION. THE STAY OF JUDGMENT REQUESTED IN THIS BILL IS IN ACCORDANCE WITH THE PROCEDURES THAT APPLY IN DISTRICT COURT CASES WHERE A DECISION IS BEING RECONSIDERED OR WILL BE APPEALED TO THE SUPREME COURT.

THE ORIGINAL BILL INCLUDED A RETROACTIVE CLAUSE WHICH WAS REMOVED BY THE HOUSE LABOR COMMITTEE. WE RECOMMEND YOU AMEND THE BILL TO INCLUDE A RETROACTIVE CLAUSE AS WELL AS A SEVERABILITY CLAUSE.

THE DIVISION STAFF WILL DISCUSS THE AMENDMENT IN A LITTLE MORE DETAIL, BUT THE BILL DOES NEED TO BE MADE RETROACTIVE BECAUSE THE VAST MAJORITY OF

2-28-89
HB 15

CLAIMS WHICH ARE BEING APPEALED TO THE SUPREME COURT ARE OLD LAW CLAIMS. IT IS THE OLD LAW CLAIMS, THOSE PRIOR TO THE 1987 LEGISLATIVE CHANGES, WHICH PRIMARILY DEAL WITH LONG TERM AND LUMP SUM BENEFITS WHICH MAY BE APPEALED AND A STAY IS NEEDED UNTIL A FINAL DECISION IS RENDERED BY THE SUPREME COURT.

THE ORIGINAL BILL BEFORE IT WAS AMENDED WAS AGREED TO BY A GROUP OF INDIVIDUALS REPRESENTING VARIOUS INTERESTS IN WORKERS' COMPENSATION. I AM SURE THESE INDIVIDUALS WILL TESTIFY BEFORE THE COMMITTEE.

3813V

Jim Murphy

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1 Page 1 of 4
DATE Feb 28, 1985
BILL NO. SB 154

HOUSE BILL NO. 154

Reinsert on lines 15 through 19:

Section 5. Retroactive applicability. (This act) is procedural in nature and applies retroactively, within the meaning of 1-2-109, to any case pending before the workers' compensation judge that has not been appealed to the Montana supreme court on or before [the effective date of this act].

Add following Section 5:

Section 6. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

9 ex. 1
SB 154

DIVISION TESTIMONY

HOUSE BILL 154

(Before Senate Labor)

HOUSE BILL 154 ALLOWS THE EMPLOYER'S INSURER TO REQUEST A STAY IF A WORKERS' COMPENSATION COURT DECISION IS BEING RECONSIDERED OR APPEALED TO THE SUPREME COURT.

THE IMPACT CAN BE PARTIALLY UNDERSTOOD IF YOU CONSIDER THE FOLLOWING STATISTICS:

1. CASES APPEALED TO THE SUPREME COURT

| F/Y | NUMBER |
|---|---|
| 1987 | 56 |
| 1988 | 36 |
| 1989 (6 mo.) | 23 |

2. CASES APPEALED DURING C/Y 1988- 26

| | |
|---|---|
| A. PLANS I & II | 14 |
| PLAN III | 12 |
| B. APPEALED BY CLAIMANT | 10 |
| APPEALED BY INSURER | 18* |
| C. TO DATE: | |
| AFFIRMED | 19 |
| REVERSED | 4 |
| PARTIAL | 1 |

*NOTE CROSS APPEAL IN TWO CASES

IN THE REIL DECISION REFERRED TO BY REPRESENTATIVE SMITH, THE ORDER DENYING THE STAY INDICATING THERE WAS NO PROVISION TO GET A STAY UNDER THE WORKERS' COMP ACT WAS DATED JULY 21, 1987. THE FINAL DECISION ON THE ISSUE WAS ON DECEMBER 3, 1987 AND THE DENIAL FOR REHEARING WAS ON JANUARY 5, 1988.

THE FINAL DECISION OVERTURNED THE WORKERS' COMPENSATION COURT DECISION, BUT SINCE THERE WAS NO STAY, THE STATE FUND PAID BENEFITS AFTER THE STAY WAS DENIED.

THE STATE FUND PAID A TOTAL OF $13,748 IN COMPENSATION BENEFITS AND $10,294 IN MEDICAL. WE HAVE REQUESTED THE MONIES BE RETURNED AND HAVE RECEIVED NOTHING FROM THE CLAIMANT AND $3,598 FROM MEDICAL PROVIDERS. WE INTEND TO CONTINUE TO PURSUE THE COLLECTION, BUT IT IS SOMEWHAT DIFFICULT BECAUSE THE CLAIMANT OF COURSE DOES NOT HAVE THE FUNDS AND WE UNDERSTAND ONE OF THE MAJOR MEDICAL PROVIDERS IS NO LONGER IN BUSINESS. IT APPEARS IT WILL BE NECESSARY TO PURSUE THE COLLECTION OF THE BENEFITS PAID THROUGH LEGAL MEANS OR AT LEAST THROUGH THE DEPARTMENT OF REVENUE'S NORMAL COLLECTION PROCEDURES WHICH OF COURSE ADDS ADDITIONAL ADMINISTRATIVE EXPENSES. A STAY OF COURSE, IF GRANTED BY THE COURT, WOULD AVOID THESE PROBLEMS.

THE PROPOSED AMENDMENT PROVIDING FOR RETROACTIVE APPLICATION OF THE STATUTE ALLOWS FOR A STAY OF THE WORKERS' COMPENSATION COURT DECISION FOR ANY COURT DECISION, NOT JUST FOR WORKERS INJURED AT THE EFFECTIVE DATE OF THIS BILL.

THE HOUSE REMOVED THE CLAUSE BECAUSE OF PAST SUPREME COURT DECISIONS WHICH DENIED THE RETROACTIVE APPLICATION OF STATUTORY CHANGES TO THE WORKERS' COMPENSATION ACT. THE CONSTITUTIONALITY OF THIS STATUTE COULD ALSO BE CHALLENGED AND THE AMENDMENT INCLUDES A SEVERABILITY CLAUSE IF SUCH A CHALLENGE IS SUCCESSFUL.

HOWEVER, WE BELIEVE AFTER REVIEWING THE CASE LAW AND CONSULTING WITH OUTSIDE LEGAL COUNSEL, THIS STATUTE COULD BE APPLIED RETROACTIVELY TO ALL

INJURIES AND WITHSTAND A CONSTITUTIONAL CHALLENGE. THIS BILL AND AMENDMENT MERELY EXTENDS TO WORKERS' COMP COURT DECISIONS THE EXISTING PROCEDURE FOR STAYS OF EXECUTION WHICH ARE ALREADY AVAILABLE FOR CIVIL APPEALS TO THE SUPREME COURT FROM THE DISTRICT COURTS. I HAVE PROVIDED THE COMMITTEE WITH A LETTER FROM OUR OUTSIDE COUNSEL WHICH I WOULD REQUEST BECOME PART OF THE RECORD. THE LETTER PROVIDES A LEGAL ANALYSIS AS TO WHY WE BELIEVE A CONSTITUTIONAL CHALLENGE COULD BE DEFENDED.

IT IS BECOMING INCREASINGLY EVIDENT THAT THE 1987 LEGISLATIVE CHANGES ARE RESULTING IN LESS AND LESS LITIGATION ON NEW CLAIMS. THE STAY, AS REPRESENTATIVE SMITH TESTIFIED IS MOSTLY NEEDED WHEN WE LITIGATE OLD LAW CLAIMS.

ONE FINAL COMMENT, HB-154 DOES NOT LEAVE THE CLAIMANT WITHOUT RECOURSE BECAUSE THE BILL REFERS TO THE PROCEDURES IN RULE 7(b) MONTANA RULES OF CIVIL PROCEDURE WHICH ALLOW THE SUPREME COURT TO SUSPEND, MODIFY, RESTORE ANY ORDER THE WORKERS' COMPENSATION COURT MAY ISSUE REGARDING A STAY OF EXECUTION.

HB 154
2-28-89

Amendments to House Bill No. 154
Third Reading Copy

For the Senate Committee on Labor and Employment Relations

Prepared by Tom Gomez, Staff Researcher
February 28, 1989

1. Title, line 11.
Strike: "AN"
Insert: "A RETROACTIVE"

2. Page 2, line 22 through page 3, line 3.
Strike: section 5 in its entirety
Insert: "NEW SECTION. **Section 5. Retroactive applicability.** [This act] is procedural in nature and applies retroactively, within the meaning of 1-2-109, to any case pending before the workers' compensation judge that has not been appealed to the Montana supreme court on or before the [effective date of this act].

NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

RECEIVED
FEB 16 1989
STATE FUND
LEGAL OFFICE

LAW OFFICES
HUGHES, KELLNER, SULLIVAN & ALKE
406 FULLER AVENUE P.O. BOX 1166
HELENA, MONTANA 59624

MICHAEL J. HUGHES
STUART L. KELLNER
JOHN F. SULLIVAN
JOHN ALKE
MIKE McCARTER
THOMAS E. MARTELLO
STEPHEN M. FRANKINO

TELEPHONE
TELECOPIER
(406) 442-3690

RECEIVED
FEB 16 1989
STATE FUND
LEGAL OFFICE

February 15, 1989

SUBJECT: House Bill 154

State Fund Legal Unit
Attention: Nancy Butler
P.O. Box 4759
Helena, MT 59604

Dear Nancy:

You have requested my opinion concerning the constitutionality of applying House Bill No. 154 retroactively to workers' compensation injuries which occurred prior to the effective date of the Bill, should it pass and be signed into law. The Bill provides for a stay of execution during any appeal from the Workers Compensation Court to the Supreme Court.

While House Bill 154 does not modify substantive remedies, it may operate to delay the enforcement of any judgment the worker may obtain in the Workers' Compensation Court. The concern with applying the Bill to antecedent claims arises because of the Montana Supreme Court's recent decision in Carmichael v. Workers' Compensation Court, 45 St. Rptr. 2012, 763 P.2d 1122 (November 1, 1988), a case in which the Court struck down the retroactive application of mediation requirements enacted by the 1987 Montana Legislature. The Court held that the application of the requirements to antecedent injuries was an unconstitutional impairment of the obligation of contract because such application significantly delayed the worker's day in court. Prior to the 1987 statute, a worker had been entitled to petition the Workers' Compensation Court immediately upon any controversy arising between himself and the insurer. After carefully reviewing Carmichael and other Contract Clause cases, it is my opinion that Carmichael does not preclude the application of House Bill 154 to prior injuries and that such application is constitutional.

Contract Clause analysis is the same under the Contract Clause of the United States Constitution and the equivalent clause of the Montana Constitution. Carmichael, 45 St. Rptr. at 2015.

Modern decisions of the United States Supreme Court flatly reject the notion that every statute which delays the enforcement of remedies available to a contracting party at the time of the making of the contract violates the Contract Clause. The landmark decision is Home Bldg. & Loan Assn. v. Blaisdell, 290 U.S. 398 (1934), a case in which the Supreme Court rejected a Contract Clause challenge to a Minnesota statute which placed a moratorium on mortgage foreclosures. Blaisdell noted that the Contract Clause is not absolute and is "qualified" by a measure of control which the State retains over remedies and State "authority to safeguard the vital interests of it people." While the moratorium at issue in Blaisdell was enacted under emergency circumstances, an

emergency is not required for a statute to pass muster under the Contract Clause. See Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400 (1983). As a general proposition, the United States Supreme Court has held that adjustments of contractual obligations and remedies are constitutional if such adjustments are reasonable and within the reasonable expectations of the parties when the contract was made. See Energy Reserves and In re Johnson, 69 B.R. 988, 993 (D. Minn. 1987).

What distinguishes a retroactive application of House Bill 154 from the retroactive application of the mediation statute at issue in Carmichael, is the reasonable expectations of the parties. The statute in Carmichael imposed an entirely new, non-judicial procedure. In contrast, House Bill 154 modifies judicial procedures already in place. It merely extends the existing procedures for stays of execution, which are already available in civil appeals to workers' compensation appeals, to workers' compensation appeals.

It is well established that the contract clause does not preclude a modification in remedies or in the procedures for the enforcement of remedies where the modification can reasonably be anticipated. Thus, in Neel v. First Federal Savings & Loan Assoc., 207 Mont. 376, 675 P.2d 96 (1984) the Montana Supreme Court sustained the application of an increased, $40,000 homestead exemption to debts pre-existing the increase. In doing so the Court held that the parties to contracts should have reasonably expected that the amount of the homestead exemption would increase, pointing out that the exemption had regularly been increased over the previous fifty years. Similarly, the courts have sustained statutes which modify civil procedure or the timing of available remedies. Changes in statutes of limitations have been sustained, even where an otherwise barred claim has been revived, e.g. International Union of Electrical, Radio and Machine Workers v. Meyers, 429 U.S. 229 (1976). Extensions of a state's long arm jurisdiction to causes ante-dating the adoption of the long arm rule have been upheld, e.g. State ex. rel. Johnson v. District Court, 148 Mont. 22, 417 P.2d 109 (1982). Changes in the rules of evidence have been deemed applicable to causes of action arising prior to the changes, e.g. Virginia & West Virginia Coal Co. v. Charles, 254 F. 379 (1918) (holding that a change in an evidentiary presumption may be applied retroactively since there are no vested rights in rules of evidence). The reason for sustaining such modifications is apparent: States and courts have traditionally retained control over judicial procedures. Thus, the parties to a contract must reasonably expect that rules of civil and appellate procedures may be modified.

Where a right of appeal is afforded, as it is in workers' compensation cases, that right must be afforded equally to all parties, and it is a denial of due process of law to impose a bond or other financial requirement which would effectively rob a litigant of a meaningful right to appeal. Texaco, Inc. v. Pennzoil Co., 784 F.2d 1133 (2nd Cir. 1986). It is within the reasonable contemplation of workers and insurers alike that future measures may be adopted to protect that right to appeal.

The need for stays of executions in workers' compensation cases is apparent [illegible] which gave rise to this remedial bill. That case was

Reil v. Billings Processors, Inc., an unreported order dated July 21, 1987, in which the Supreme Court held that the stay of execution provisions of the Montana Rules of Appellate Civil Procedure "appear to be related [only] to appeals from district courts." Following that decision, the insurer made the payments required under the Workers' Compensation Court judgment, payments which were substantial. Although the insurer prevailed on appeal, it has encountered great difficulty in recouping all of its payments and still has not done so.

Moreover, payment of a Workers' Compensation Court judgment may moot any appeal by the insurer, especially in cases of large lump sum awards or where the medical and compensation benefits have accumulated over a long period of time. In 1988 the State Compensation Insurance Fund conducted a five month survey of lump sum advances exceeding $45,000. That survey showed that workers receiving lump sums frequently fail to utilize the sums for the purposes intended, or fail in their proposed ventures. An affidavit filed in Ernest Easton v. Donald B. Shields, WCC No. 8609-3865 on October 20, 1986 summarizes those findings. Sixty-five settlements were made during the period, totalling $4,623,000. Of those settlements thirty-three (33) were for business ventures and another six (6) for educational purposes. The State Fund was only able to document that eleven (11) of the business ventures had gone forward as proposed, of which one (1) failed, two (2) had already been sold, and one (1) had ceased due to the claimant's return to total disability status. Of the six claimants who planned to attend school, two did not (one returned to heavy construction work), and two dropped out of school for medical reasons. The insurer has no control over the ultimate expenditure of the sums awarded to the claimant and thus no security for recoupment of those sums if they are not securely invested by the claimant. In cases where lump sums are based on the claimants' indebtedness, and are used to payoff creditors, recoupment will frequently be hopeless.

House Bill 154 would not leave a claimant wholly without recourse during the pendency of an appeal. Section One provides that a stay may be entered "under conditions as the judge deems proper" and Rule 7(b) of the Montana Rules of Appellate Procedure provides that, "On application, the supreme court in the interest of justice may suspend, modify, restore, or grant an order made under this subsection." These provisions are seemingly broad enough to give the courts discretion to deny a stay with respect to any order for payment of bi-weekly benefits which come due during the appeal process, while staying the remainder of the judgment. An exercise of this discretion would give needy claimants bi-weekly income to meet their current expenses during any appeal, while protecting the insurer's rights of appeal respecting accumulated benefits, medical benefits, and lump-sum commutation of future benefits.

Sincerely,

Mike McCarter

ks:Butler.Ltr

LABOR COMMITTEE

VISITORS' REGISTER

51st LEGISLATIVE SESSION

DATE: February 28, 1989

LEAVE PREPARED STATEMENTS WITH SECRETARY! PLEASE!!!

| PRINT: NAME | REPRESENTING | Check One: Support | Check One: Oppose |
|---|---|---|---|
| Peggy Williams | SRS | VHB243 | |
| Mike Hankins | Spotted Farms INC / Riders Guild | | HB154 HB155 |
| George Wood | Mt. Self Employed Assn. | HB154 HB155 | |
| Norm Crossfield | " | HB 154 | |
| Dave Gee | Montana Mining & Investment Assn | HB154 and 155 | |
| Norma Bulle | CGIT | HB154 HB155 | |
| Jon Murphy | SCIF | HB 154 155 | |
| Tim Smith | M.A.R. | HB243. | |
| Mike Sherwood | MTLA | HB154 155 | |
| Jim Murry | Mont. AFL-CIO | " | |
| Jim Ingels | Mt Chamber of Commerce | Monitoring all 3 | |
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Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the motion to TABLE and CARRIED unanimously.

HEARING ON HOUSE BILL 154

Presentation and Opening Statement by Sponsor:

Rep. Smith stated that the purpose for this legislation is to clarify the statutes by allowing a stay of Workers' Compensation Court Decision while that decision is being appealed. This is in response to a Supreme Court decision; Reil vs. the State Comp Insurance Fund. In this case, even though the initial decision was appealed, the State Compensation Insurance Fund had to start paying benefits according to the Workers' Compensation court decision. In that same case, the Supreme Court overturned a decision which then required the State Fund to attempt to seek reimbursement for the benefits paid. He believes this was around $20,000. Prior to this decision, the judgement of Workers' Comp Court was in effect put on hold pending appeal regardless of whether the claimant or the insured employer was appealing the decision. Rep. Smith stated that the stay of judgement requested in this bill is in accordance with the procedures that apply in District Court cases where decisions are being reconsidered and will be appealed to the Supreme Court.

Testifying Proponents and Who They Represent:

Bill Palmer, Interim Administrator, Workers' Compensation
Oliver Goe, Montana Municiple Insurance Authority
Michael Sherwood, Montana Trial Lawyers Association
Jim Murry, Executive Secretary, Montana AFLCIO
George Wood, Executive Secretary, Montana Self Insurer's Assoc.
Tim Reardon, Workers' Compensation Judge

Proponent Testimony:

Bill Palmer stated that HB 154 allows the employers as well as the insurer to request a stay of the Workers' Comp Court Decision to be reconsidered or appealed to the Supreme Court. There have been a number of cases that have been appealed to the Supreme Court in recent years; however, these cases vary, they are not all state funded cases. Additionally, there is a private carrier. In the current calendar year, of the 26 cases that have gone to the Supreme Court, 14 were cases appealed by the self insurers or private carriers and 12 were state funded cases (EXHIBIT 1). In the case of Reil vs. the State Compensation Insurance Fund, it was dated and decided on July 21, 1987. Referred to by Rep. Smith, the order denied the stay indicating that there were no provisions under the Workers' Compensation Act to grant the stay. The final decision on the issue was

issued on December 3, 1987 and a denial for a rehearing was made in January 1988. Mr. Palmer commented that during that interim, the State Fund paid approximately $13,000 in compensation benefits and over $10,000 in medical benefits. The State Fund had requested that these benefits be reimbursed; however, to date, they have received nothing back from the appellate in wage loss and only about 1/3 of the medical reimbursement from the medical providers. They intend to continue to pursue for the collection, but it is somewhat difficult as the claimant has spent the money and they understand that even one of the medical providers is no longer in business. Of course, this stay granted by the court would avoid these kinds of problems. It appears it will be necessary to pursue the collection of benefits paid through legal means or through the Dept. of Revenues normal collection process. Mr. Palmer stated that the question came up about the requirement for a bond. He presented to the Committee a proposed amendment (EXHIBIT 2) amending page 2, line 1. Following the word "bond", insert the Workers' Compensation judge may waive the bond requirement. This is an effort allowing the judge some discretion as to whether or not the appealing party should actually be required to put up the bond until the Supreme Court has come down with a final decision.

Oliver Goe, an attorney for Browning, Kaleczyc, Barry and Hogan, made an appearance on behalf of the Montana Municiple Insurance Authority. This is an association of approximately a little over 100 cities and towns throughout the State of Montana providing self insurance pool for liability as well as Workers' Compensation coverage. Appearing as a proponent to HB 154, he feels it is an important step in preserving the rights of litigants pending appeal before the Montana Supreme Court. The situation has arisen and will undoubtedly arise in the future that in those situations pending an appeal, where that decision is ultimately reversed by the Montana Supreme Court, it will be extremely difficult to recoup benefits which have been paid out during the pendency of the appeal. It becomes even more important in those situations where the Workers' Compensation Court has awarded a lump sum advance of benefits of any substantial nature where that decision is ultimately reversed by the Montana Supreme Court. Mr. Goe stated that he feels that the proposed amendment will place all litigants on equal footing. He feels this bill will just place us back to what we all thought was appropriate in the first instance and allow for a stay pending appeal.

Michael Sherwood stated that the Montana Trial Lawyers Association supports HB 154 as amended. He stated they did, however, have some problems with the supercedious bond. The state and the major insurers most likely don't need a bond and it is just a waste of their money and time in getting one. The problem, of course, arises in the factual [illegible] has been set forth regarding an appeal by a

claimant and inability to recoup the losses if indeed later his position is reversed by the Supreme Court.

Jim Murry and George Wood stated that they would like to go on record as supporting HB 154 as amended.

Tim Reardon expressed that he is not a proponent nor an opponent of this legislation. He simply has a couple of observations that the Committee should be aware of. First, any stay orders are discretionary orders. They are not automatically given. That isn't the case in District Court. Secondly, in section 5, the retroactive applicability in the 1987 and 1985 legislature made a number of changes to the act that were intended to be retroactive. The Supreme Court said at least three times since then that the law in effect on the day of the injury controls, and you can't retroactively change that. In this case, the retroactive application is stay. He doesn't think that it would be upheld. Whether it's a good idea or not, he doesn't think they could make it retroactive.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Mercer stated in section 1, subparagraph 1, last sentence, the stay may not extend more than 30 days. Subparagraph 2 talks about appeals. He is wondering if there wouldn't be some confusion that the 30 day limitation could possibly apply to sub 2 when it is not intended to.

Mr. Sherwood commented that this language was drafted and basically taken from the roles of civil procedure. This is consistent with the rules of civil procedure. The stay of lower court or district court is for 30 days; therefore, giving the person enough time to go to the Supreme Court and ask for a stay. Jurisdiction will have shifted at that point.

Rep. Brown commented on the statement made by Judge Reardon that the Supreme Court declared this to be invalid in previous cases. Is there some reason it would be different here? Rep. Mercer stated that what we are talking about is the application to something that is procedural in nature and not substitute. It is very similar to what they had with the mediation process. They considered a mediation process to be procedural. He hoped that it is more procedural and certainly not something that is an entitlement of a claimant; therefore, the retroactive applicability of it would apply.

Rep. Brown followed up with a question to the above mentioned regard. It seems to be that the word "procedural" is not appropriate. It is, in fact, substantive. Basically, what this bill does is give the insurer a club to force the claimant to either take lower benefits or to give up his benefits while he is awaiting for an appeal. That is pretty substantive.

Rep. Mercer stated that line 4 on page 2 talks about Rule 7-B of the Montana Rules of Civil Procedures. It is Rule 7-B of the Montana Rules of Appellate Procedures that these guys are most likely talking about. It is with great suspicion that the Committee must review the bill during executive session to be sure that they have accurately done their homework.

Closing by Sponsor: Rep. Smith closed.

DISPOSITION OF HOUSE BILL 154

Motion: A DO PASS motion was made by Rep. Eudaily, motion seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Eudaily moved the amendment listed as EXHIBIT 2. Motion seconded by Rep. Hannah. A vote was taken on the amendment and CARRIED unanimously.

Rep. Mercer introduced proposed amendments. Page 2, line 4, strike the word "civil", insert appellate. Line 17, page 1, insert notice of appeal has been filed. Line 21, page 1 following "appellant", insert comma, delete "may request". Line 22 following "appeal", insert may apply to the Workers' Compensation judge for. What this would do is say where there is no notice of appeal, then the judge can stay the execution. However, he cannot do it for over 30 days, but where there is an appeal then they apply to the Workers' Compensation judge for the state. If it is not in there it really is not clear who it is that is granting the stay. Under rule 7-B of the rules of the appellate procedures, the Montana Supreme Court can affect the stay however they deem it appropriate. Motion was seconded by Rep. Eudaily.

Rep. Addy commented that it is then Rep. Mercer's concept that the Workers' Comp judge would order a stay pending an appeal. That they would handle the entire stay process and it would not be up to the Supreme Court to order a further stay as provided in Rule 7-B. Once the case has left the Workers' Comp court and it is before the Supreme Court, the Workers' Comp court no longer has jurisdiction. It is then in the hands of the Supreme Court for the relief that they [illegible] has always been asked

for and generally been granted by the Supreme Court.

Rep. Mercer responded to Rep. Addy's comment by stating that first, when the bill was addressed, he read the bill and it was unclear to him who would be responsible in granting the stay. Secondly, the title of the bill, which says that the workers' comp judge would be able to issue a stay pending an appeal. Third, he looked at Rule 7-B and it is wishy-washy as to who actually does the stay. However, in the last sentence in Rule 7-B it states that the Supreme Court may modify any order that is made under that section. Rep. Mercer, therefore, assumed that the amendments that he proposed make it absolutely clear that if a person wants a stay, they go to the workers' comp judge. That is his option, and once the case is on appeal then the Supreme Court could change it if they so chose under Rule 7-B. If we don't amend this bill, he doesn't see how anyone knows who grants the stay.

Rep. Addy expressed that it appears to him that they have confused the situation more than they have clarified it. Presently it is very clear that the Workers' Comp judge can order the stay pending post trial motions and for 30 days thereafter, which is the appeal period. Thereafter, the only one that has that authority is the Supreme Court. They are mixing the powers of the Supreme Court that has jurisdiction after the appeal was taken, and a court that no longer has that; the Workers' Comp court.

Rep. Mercer stated that he just wants the bill to be as clear as possible. He wondered if the attorneys could be consulted as to what their intention is. If they could hold off on further action on the bill they could talk to the attorneys.

Recommendation and Vote: Rep. Brown suggested to the Committee to HOLD any further action on HB 154.

HEARING ON HOUSE BILL 155

Presentation and Opening Statement by Sponsor:

Rep. Clyde Smith stated that the purpose of HB 155 is to clarify the liability of the insured employer on an existing claim when an employee suffers a new injury to the same part of the body. This is in response to a Supreme Court decision, Guild vs. an insurance carrier. In this case, the injured worker sustained another injury at a parade while stepping out of the car. The Supreme Court overturned the Workers' Compensation Court and stated the following: "We owe that under the law of Montana the fact that a claimant has reached maximum healing does not eliminate the employers future liability for temporary total disability benefits, whereas here a subsequent non-employment related event caused aggravation of the first injury". Such a case is not comparable to a case where there is a second industrial

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 24, 1989

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| REP. KELLY ADDY, VICE-CHAIRMAN | X | | |
| REP. OLE AAFEDT | X | | |
| REP. WILLIAM BOHARSKI | X | | |
| REP. VIVIAN BROOKE | X | | |
| REP. FRITZ DAILY | X | | |
| REP. PAULA DARKO | X | | |
| REP. RALPH EUDAILY | X | | |
| REP. BUDD GOULD | X | | |
| REP. TOM HANNAH | X | | |
| REP. ROGER KNAPP | X | | |
| REP. MARY McDONOUGH | | | X |
| REP. JOHN MERCER | X | | |
| REP. LINDA NELSON | X | | |
| REP. JIM RICE | X | | |
| REP. JESSICA STICKNEY | X | | |
| REP. BILL STRIZICH | X | | |
| REP. DIANA WYATT | X | | |
| REP. DAVE BROWN, CHAIRMAN | X | | |
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CS-30

# DIVISION TESTIMONY

## HOUSE BILL 154

HOUSE BILL 154 ALLOWS THE EMPLOYER'S INSURER TO REQUEST A STAY IF A WORKERS' COMPENSATION COURT DECISION IS BEING RECONSIDERED OR APPEALED TO THE SUPREME COURT.

THE IMPACT CAN BE PARTIALLY UNDERSTOOD IF YOU CONSIDER THE FOLLOWING STATISTICS:

1. CASES APPEALED TO THE SUPREME COURT

| F/Y | NUMBER |
|---|---|
| 1987 | 56 |
| 1988 | 36 |
| 1989 (6 mo.) | 23 |

2. CASES APPEALED DURING C/Y 1988- 26

| | |
|---|---|
| A. PLANS I & II | 14 |
| PLAN III | 12 |
| B. APPEALED BY CLAIMANT | 10 |
| APPEALED BY INSURER | 18* |
| C. TO DATE: | |
| AFFIRMED | 19 |
| REVERSED | 4 |
| PARTIAL | 1 |

*NOTE CROSS APPEAL IN TWO CASES

IN THE REIL DECISION REFERRED TO BY REPRESENTATIVE SMITH, THE ORDER DENYING THE STAY INDICATING THERE WAS NO PROVISION TO GET A STAY UNDER THE WORKERS' COMP ACT WAS DATED JULY 21, 1987. THE FINAL DECISION ON THE ISSUE WAS ON DECEMBER 3, 1987 AND THE DENIAL FOR REHEARING WAS ON JANUARY 5, 1988.

EXHIBIT 1
DATE 1-24-89
HB 154

THE STATE COMPENSATION INSURANCE FUND PAID A TOTAL OF $13,748 IN COMPENSATION BENEFITS AND $10,294 IN MEDICAL. WE HAVE REQUESTED THE MONIES BE RETURNED AND HAVE RECEIVED NOTHING FROM THE CLAIMANT AND $3,598 FROM MEDICAL PROVIDERS. WE INTEND TO CONTINUE TO PURSUE THE COLLECTION, BUT IT IS SOMEWHAT DIFFICULT BECAUSE THE CLAIMANT OF COURSE DOES NOT HAVE THE FUNDS AND WE UNDERSTAND ONE OF THE MAJOR MEDICAL PROVIDERS IS NO LONGER IN BUSINESS.

A STAY OF COURSE, IF GRANTED BY THE COURT, WOULD AVOID THESE PROBLEMS. IT APPEARS IT WILL BE NECESSARY TO PURSUE THE COLLECTION OF THE BENEFITS PAID THROUGH LEGAL MEANS OR AT LEAST THROUGH THE DEPARTMENT OF REVENUE'S NORMAL COLLECTION PROCEDURES WHICH OF COURSE ADDS ADDITIONAL ADMINISTRATIVE EXPENSES.

William R. Palmer
Interim Administrator, DWC
1/24/89

1-24-89
HB 154

# PROPOSED AMENDMENT TO HOUSE BILL NO. 154

1. Page 2, line 2

Following: "the bond."

Insert: The workers' compensation judge may waive the bond requirement.

3548t

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 154 DATE JAN. 24, 1989

SPONSOR REP. SMITH

| NAME (please print) | RESIDENCE | SUPPORT | OPPOSE |
|---|---|---|---|
| George Wood | Missoula not Self Insured | ✓ | |
| Jacqueline Terrell | American Ins Assoc. | X | |
| Mike Sherwood | MTLA | ✓ as amended | |
| Jim Murry | Mont. State AFL-CIO | as Proposed | |
| Oleen Cook | MMIA | | |
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

is very difficult for the Dept. to institute an action for several reasons. One, the cost that would be involved, both in dollar amounts or if they were going to hire an attorney. The other problem is an independent action would really be a conflict of interest. However, in the case of Cascade County they were more than willing to pay their share of the attorney's fees.

Rep. Eudaily drew the Committee's attention to the list of health care providers on page 3, lines 15-18. Are those all the health care providers that would have a lien? Mr. Cater responded that they the ones that currently have a lien in Montana State law. Rep. Eudaily asked if the money goes back to the general fund or if it goes back to SRS. Mr. Cater stated that it is his understanding that it goes back to the general fund, but that he could be mistaken.

Closing by Sponsor: Rep. Cobb closed.

DISPOSITION OF HOUSE BILL 69

Motion: Rep. Mercer made a motion to reconsider action taken on HB 69, motion was seconded by Rep. Wyatt. A vote was taken and PASSED unanimously to reconsider previous action taken.

Rep. Mercer moved HB 69 DO PASS, motion seconded by Rep. Wyatt. Motion CARRIED.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Mercer moved to amend page 1, line 25, strike "and", insert or. On top of page 2, following "state", insert a comma or a combination of the two. The purpose of this amendment could be a unit that has state or leased land or leased land only. Amendment was seconded by Rep. Darko. Motion CARRIED.

Recommendation and Vote: Rep. Mercer moved HB 69 DO PASS AS AMENDED, motion seconded by Rep. Darko. A vote was taken and CARRIED unanimously.

DISPOSITION OF HOUSE BILL 154

Motion: A DO PASS motion was made by Rep. Mercer, motion seconded by Rep. Gould.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Addy moved the proposed amendments (EXHIBIT 4), seconded by Rep. Gould. A vote on the amendments was taken and CARRIED.

Recommendation and Vote: Rep. Addy moved HB 154 DO PASS AS AMENDED, motion seconded by Rep. Gould. A vote was taken

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 30, 1989

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| REP. KELLY ADDY, VICE-CHAIRMAN | X | | |
| REP. OLE AAFEDT | X | | |
| REP. WILLIAM BOHARSKI | X | | |
| REP. VIVIAN BROOKE | X | | |
| REP. FRITZ DAILY | X | | |
| REP. PAULA DARKO | X | | |
| REP. RALPH EUDAILY | X | | |
| REP. BUDD GOULD | X | | |
| REP. TOM HANNAH | | | X |
| REP. ROGER KNAPP | X | | |
| REP. MARY McDONOUGH | X | | |
| REP. JOHN MERCER | X | | |
| REP. LINDA NELSON | X | | |
| REP. JIM RICE | X | | |
| REP. JESSICA STICKNEY | X | | |
| REP. BILL STRIZICH | X | | |
| REP. DIANA WYATT | X | | |
| REP. DAVE BROWN, CHAIRMAN | X | | |
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CS-30

STANDING COMMITTEE REPORT

January 30, 1969



Mr. Speaker: We, the committee on Judiciary report that House Bill 154 (first reading copy -- white) do pass as amended .

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 7.
Following: "APPEAL;"
Insert: "TO ALLOW EITHER THE WORKERS' COMPENSATION JUDGE OR THE SUPREME COURT TO GRANT A STAY OF EXECUTION DURING APPEAL;"

2. Title, line 8.
Strike: "A RETROACTIVE"
Insert: "AN"

3. Page 1, line 14.
Following: "to the"
Insert: "workers' compensation"

4. Page 1, line 15.
Following: "execution"
Insert: "under this subsection"

5. Page 1, lines 20 and 21.
Strike: "Except" on line 20 through "the" on line 21
Insert: "The"
Following: "request" on line 21
Insert: "of the workers' compensation judge or the supreme court"

6. Page 2, line 2.
Following: "law."
Insert: "A court granting a stay may waive the bond requirement."

7. Page 2, line 4.
Strike: "Civil"
Insert: "Appellate"

8. Page 2, line 15.
Strike: "Retroactive applicability"
Insert: "Applicability"

9. Page 2, lines 15 through 19.
Strike: "is" on line 15 through "before" on line 19
Insert: "applies to injuries occurring after"

DATE 1-30-89
HB 154

Amendments to House Bill No. 154
First Reading Copy

Requested by the Committee on the Judiciary
For the Committee on the Judiciary

Prepared by John MacMaster
January 24, 1989

1. Title, line 7.
Following: "APPEAL;"
Insert: "TO ALLOW EITHER THE WORKERS' COMPENSATION JUDGE OR THE SUPREME COURT TO GRANT A STAY OF EXECUTION DURING APPEAL;"

2. Title, line 8.
Strike: "A RETROACTIVE"
Insert: "AN"

3. Page 1, line 14.
Following: "to the"
Insert: "workers' compensation"

4. Page 1, line 18.
Following: "execution"
Insert: "under this subsection"

5. Page 1, lines 20 and 21.
Strike: "Except" on line 20 through "the" on line 21
Insert: "The"
Following: "request" on line 21
Insert: "of the workers' compensation judge or the supreme court"

6. Page 2, line 2.
Following: "law."
Insert: "A court granting a stay may waive the bond requirement."

7. Page 2, line 4.
Strike: "Civil"
Insert: "Appellate"

8. Page 2, line 15.
Strike: "Retroactive applicability"
Insert: "Applicability"

9. Page 2, lines 15 through 19.
Strike: "is" on line 15 through "before" on line 19
Insert: "applies to injuries occurring after"